No. 101.

Brief of Plaintiffs in Error.

Filed Sept. 28, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

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C. G. Blake, Rogers, Brown & Company, and the Hull Coal and Coke Company, *Plaintiffs in Error*,

vs.

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

In Error to the Supreme Court of the State of Tennessee.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

STATEMENT.

The question presented in this case is whether the act of the General Assembly of the State of Tennessee, approved March 21, 1877 (Acts of Tennessee, 1877, p. 44, c. 31), is repugnant to, and in contravention of, the provisions of clause 1 of section 2 of Article IV of the Constitution of the United States, and to section 1 of Article

XIV of the amendments of said Constitution. The Record is printed upon a stipulation of the parties for the purpose of confining the argument to the Federal question.

The Embreeville Freehold Land, Iron, and Railway Company (limited) was incorporated under the laws of the Kingdom of Great Britain and Ireland, but, prior to the filing of the original bill in this case, had registered its charter in Tennessee under the act approved March 21, 1877, and began a mining and manufacturing business in the United States under the provisions of that act. (Rec., 1, par. 1.)

McClung & Company, and others, on June 20, 1893, filed a general creditors' bill against the company in the Chancery Court of Washington County, Tennessee, alleging its insolvency, and the said court sustained the general creditors' bill, appointed a receiver for the property in Tennessee, administered the affairs of the company in that State, and passed decrees adjudicating the rights and priorities of creditors. The question here is in respect to the preference given by the courts of the State, under the Tennessee statute, to creditors residing in Tennessee over creditors who resided in other States of the Union. (Rec., 1, par. 2.)

The plaintiffs in error, C. G. Blake, Rogers, Brown & Company (names of the members of the company given in full in paragraph 5, on page 21 of the Record), all residents of the State of Ohio, and the Hull Coal and Coke Company of the State of Virginia, were permitted to amend their several petitions for the purpose of alleging and raising the Federal question. (Rec., 37.)

The chancellor of the Washington County Chancery Court recognized the Federal question in his findings when he stated:

"As between non-residents of Tennessee, but citizens of the United States, and citizens of other countries, I find no precedents. * * * Creditors contracting with the Embreeville Company, as located and doing business in Tennessee, who are citizens of States or countries other than Great Britain, will share ratably in the assets to be administered here next after the Tennessee creditors, Pittsburg Company, and coke stopped in transit." (Rec., 40.)

The chancellor then entered a final decree, in which he declared the act of the General Assembly of Tennessee, approved March 21, 1877 (Acts of Tennessee, 1877, p. 44, c. 31), constitutional, and not repugnant to the Constitution of the United States, and adjudged the creditors of the Embreeville Company who resided in Tennessee to be entitled to priority of payment and satisfaction out of the assets of the company as against the creditors of said company residing in other States. (Rec., 43, pars. 5, 6; also pars. 11, p. 44; 13, p. 46; 14, 15, 16, p. 47.) The plaintiffs in error excepted to the part of the decree adjudging the act of the Tennessee Legislature of March 21, 1877, constitutional, and not repugnant to, nor in contravention of, the Constitution of the United States, and also to the part of the decree adjudging priority of payment to the Tennessee creditors over the creditors of other States of the Union. (Rec., 49, par. 20.) An appeal was taken from this final decree to the Supreme Court of Tennessee. (Rec., 49, par. 21.) The cause, however, reached the Court of Chancery

Appeals at Knoxville, Tenn., at its September Special Term, 1895, and that court entered a modified decree, from which the plaintiffs in error prayed and obtained an appeal to the Supreme Court of Tennessee. The decree affirmed the priority of payment of creditors who resided in Tennessee, but was modified as to creditors residing out of the State by placing creditors of other States and foreign countries upon the same footing. From this decree C. G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company appealed to the Supreme Court of Tennessee. (Rec., 66.) It is apparent from the opinion that the Chancery Court of Appeals was rather desirous of avoiding the Federal question. The special judge who wrote the opinion, after stating, in effect, that the court was not called upon to decide the question because the constitutionality of the said act had been conceded in the court below, yet proceeded to a discussion of the subject to such an extent that it was found necessary in the Supreme Court of the State to specifically reverse the finding of the Chancery Court of Appeals on this point. (Rec., 63, 64, 69.) Although the Federal question, as the Record discloses, was properly raised, discussed, and decided against the plaintiffs in error in all of the courts of the State, yet if this had not been the case, and the Federal rights of the parties had been intentionally withheld from decision by the State courts, the Supreme Court would entertain jurisdiction.

Roby *v.* Colehour, 146 U. S., 153, 159, 160.

The plaintiffs in error appealed from the decree of the Chancery Court of Appeals to the Supreme Court of

Tennessee. (Rec., 66.) The decree of the Chancery Court of Appeals was affirmed by the Supreme Court of the State of Tennessee, and the act of March 21, 1877, of the General Assembly of the State of Tennessee was held not to be in contravention of the Constitution of the United States, in the following language:

"That the act of the General Assembly of Tennessee passed March 19, 1877, and approved March 21, 1877, chapter 31, entitled 'An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State,' is in all respects a valid enactment and is not in contravention of paragraph 2, Article IV, or Article XIV, amendments to the Constitution of the United States, nor in contravention of any other provision of the Constitution of the United States; and the court further finds that said Court of Chancery Appeals erred in determining that the question of the construction of the said act was not properly presented to said court under the general appeals prosecuted therein, and that portion of the said findings of the Court of Chancery Appeals is reversed." (Rec., 69.)

An order of severance was entered by the Supreme Court of Tennessee, and the plaintiffs in error herein allowed to sue out and prosecute a writ of error as to their own respective interests; the writ of error was allowed. (Rec., 79.)

The act of the General Assembly of Tennessee which we contend is repugnant to, and in contravention of, the said provisions of the Constitution of the United States, reads as follows:

Acts of Tennessee, 1877, Chap. 31, Page 44.

An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That corporations chartered or organized under the laws of other States or countries, for the purpose of mining ores or coals, or of quarrying stones or minerals, of transporting the same, or erecting, purchasing, or carrying on works for the manufacture of metals, or of any articles made of or from metal, timber, cotton, or wool, or of building dwelling houses for their workmen and others, or gas works, or water works, or other appliances designed for the promotion of health, good order, or general utility, in connection with such mines, manufactories, and dwelling houses, may become incorporated in this State, and may carry on in this State the business authorized by their respective charters, or the articles under which they are or may be organized, and may enjoy the rights and do the things therein specified, upon the terms and conditions, and in the manner and under the limitation herein declared.

SEC. 2. *Be it further enacted,* That each and every corporation created or organized under or by virtue of any government other than that of this State, of the character named in the first section of this act, desiring to carry on its business in this State, must first file in the office of the Secretary of State a copy of its charter or articles of association, certified in the manner directed by law for the authentication of the statutes of the State or country under whose laws such corporation is chartered or organized, and must cause an abstract of the

same to be recorded in the office of the Register of each county in which such corporation proposes to carry on its business or to acquire any lands.

SEC. 3. *Be it further enacted*, That such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdictions of the courts of this State, and may sue and be sued therein in the mode and manner that is, or may be, by law directed in the case of corporations created or organized under the laws of this State.

SEC. 4. *Be it further enacted*, That such corporations may purchase, acquire, and hold real estate in fee or any other interest less than fee, and personal property of every kind, as they may deem necessary or suitable for the carrying on of the business specified in their said charters or articles of association, filed as aforesaid with the Secretary of State, and may sell, lease and convey such real estate as natural persons may do. And the State of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations, or the alienage or non-residence of the shareholders of such corporation, or any of them.

SEC. 5. *Be it further enacted*, That the corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities and engagements of the said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements and contracts. Nevertheless, creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts,

engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation, but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufacturers in this State, or otherwise.

SEC 6. *Be it further enacted*, That such of said corporations as shall engage in the mining of coals, iron ore, or other minerals, and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or waterway at the point or place most convenient for its operation and its business, and for this purpose such a corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired.

SEC. 7. *Be it further enacted*, That all corporations coming under the provisions of this act, shall in good faith and truly, within one year after filing with the

Secretary of State the certified copy of the charter or articles of association, as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of association as in this act declared, it being a chief object of this act to secure the opening and development of the mineral resources of the State, and to facilitate the introduction of foreign capital, and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this State within one year after filing its said charter or articles of association in the office of the Secretary of State, all rights and privileges conferred by this act shall lapse and become void and of no effect.

SEC. 8. *Be it further enacted*, That any corporation obtaining and having the privileges of this act may establish towns, villages or settlements for the use and residence of its employés, and others, on any lands acquired by virtue of this act; and until the population is sufficiently large for the formation of municipal corporations in any of such towns or villages, may establish such regulations for the government thereof as shall not be inconsistent with the laws of this State; and it shall not be lawful for any person or persons (except for medical uses, as evidenced by the written order of some duly certified medical practitioner), nor for any corporation, to distill, have, make, sell, barter, or give away, any spirituous liquor or intoxicating drink of any kind, whether described as "bitters," or by any other name that may be used to disguise its real nature, or to evade the provisions of this act, upon any lands acquired by any corporation under this act, nor within a radius of five miles (except within the boundaries of an incorpo-

rated town) from any mine or quarry, or of any furnace, rolling mill, foundry or factory of any kind established or purchased by any corporation under this act, so long as such mine, quarry, furnace, rolling mill, foundry or factory is actually worked, or held for the purpose of being worked, or whilst under construction, and all the provisions and restrictions of Chapter 112 of the Acts of the Legislature of Tennessee, 1871, passed 14th December, 1871, are hereby declared applicable to all corporations organized under this act, and all persons violating any of the provisions of this section of this act shall be punished as declared in the said act of 1871.

SEC. 9. *Be it further enacted*, That if any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the Secretary of State, should be in contravention or violation of the laws of this State, all such parts thereof as may be found to be in conflict with the laws of this State shall be null and void.

SEC. 10. *Be it further enacted*, That this law shall take effect from the date of its passage, the public welfare requiring it.

Passed March 19, 1877.

EDWIN T. TALLIAFERRO,
Speaker of the House of Representatives.
HUGH M. MCADOO,
Speaker of the Senate.

Approved March 21, 1877.
JAMES D. PORTER,
Governor.

The assignments of error on behalf of the plaintiffs in error are as follows:

Assignments of Error.

Charles G. Blake, Rogers, Brown & Company, and the Hull Coal and Coke Company, by their solicitor, feeling themselves to be aggrieved by the findings and decree of the Supreme Court of Tennessee in the above-entitled cause, assign error thereto as follows, to wit:

I.

That the court erred in finding that the act passed by the General Assembly of Tennessee on March 19, 1877, and approved March 21, 1877, being chapter 31 of the Laws of Tennessee of 1877, defining the terms upon which foreign corporations organized for mining and manufacturing purposes might do business in Tennessee, was a valid enactment.

II.

That in the Chancery Court held at Jonesboro, in Washington County, State of Tennessee, being the court which had and exercised original jurisdiction in the above-entitled cause, the appellants herein specially set up and claimed that they were entitled to the privileges and immunities guaranteed in section 2, Article IV of the Constitution of the United States—namely, "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States"—and that they were deprived of such privileges and immuni-

ties by the act of the General Assembly of Tennessee, approved March 21, 1877, above referred to, and also that their rights, privileges, and immunities as citizens of the United States were abridged by the provisions of the statute of the General Assembly of Tennessee, approved March 21, 1877, referred to above, under the provisions of section "1" of Article XIV of the amendments of the Constitution of the United States, and that they were also deprived of their property without due process of law by the enforcement of said invalid enactment of the General Assembly of the State of Tennessee, but the decision of said Chancery Court was against the rights, privileges, or immunities so set up and claimed by the appellants; and the same rights, privileges, or immunities so set up and claimed in the State Chancery Court of original jurisdiction were again set up and claimed by the appellants in the Supreme Court of the State of Tennessee, the highest court of the State of Tennessee in which a decision in this suit could be had, and the decision of said Supreme Court was against the rights, privileges, or immunities so set up and claimed by the appellants under the aforesaid provisions of the Constitution of the United States; all of which is hereby assigned as error.

III.

That the act of the General Assembly of Tennessee passed March 19, 1877, and approved March 21, 1877, and which was construed and interpreted, and the provisions of which said act were applied and enforced in this cause against these appellants, was and is in contra-

vention of the Constitution of the United States, in that said act grants privileges and immunities to citizens of Tennessee not common to other citizens of the United States.

IV.

That said act passed March 19, 1877, and approved March 21, 1877 (chapter 31 of the acts of the General Assembly of Tennessee passed in the year 1877), entitled "An act to declare the terms upon which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State," is in contravention of, and repugnant to, section "1," Article "XIV," of the amendments to the Constitution of the United States.

Wherefore these appellants pray that, for the errors assigned, said findings and decree may be reversed. (Rec., 66.)

BRIEF.

We think it clearly appears from the Record that the Federal question was affirmatively raised in all of the courts of the State to which the cause was presented, including the Supreme Court, which is the highest court of the State; and that it is therefore open in the Supreme Court of the United States for consideration and determination under section 709 of the Revised Statutes of the United States, and under the provision of section 5 of the Judiciary Act of March 3, 1891 (26 Stat., 826).

The Federal question—namely, the question of the repugnancy of the act of the General Assembly of the State of Tennessee, approved March 21, 1877 (Acts. Tenn., ch. 31, p. 44), to clause 1 of section 2 of Article IV, and section 1 of the Fourteenth Amendment of the Constitution of the United States—having been raised in the proper court of the State, at the proper time and in the proper way, and the question having been decided in the highest court of Tennessee having jurisdiction to decide the same, against the claim set up by the plaintiffs in error, and in favor of the validity of the statute of Tennessee aforesaid, the cause falls within the rule of a long line of decisions of this court in which it has entertained jurisdiction. The Federal question was directly involved in this cause so that the State court could not, and did not, enter its decree without deciding such question.

Sayward *v.* Denny (and cases cited), 158 U. S., 180, 183, 184;

Whitten *v.* Tomlinson, 160 U. S., 231, 238;

Connecticut, etc., *v.* Woodruff, 153 U. S., 689;

Insurance Co. *v.* Treasurer, 11 Wall., 204;

Chicago, Burlington, etc., R'd. *v.* Chicago, 166 U. S., 226; 237.

It will be observed that the question here presented is not one that affects the rights of a corporation, or the rights of procedure or legal process in the State courts, but it affects the immediate rights, privileges, and immunities of the plaintiffs in error as citizens of Ohio and Virginia, and also as citizens of the United States.

The statutes of the State, the validity of which is drawn in question, denies to these plaintiffs in error, who are not citizens of Tennessee but of other States of the Union, the right and privileges of collecting their claims against an insolvent corporation in the same manner as citizens of Tennessee are allowed to collect their claims against such corporation. The statute of the State makes an absolute discrimination in favor of citizens of Tennessee.

Section 5 of the Tennessee statute contains the discriminating provision against the plaintiffs in error in authorizing the distribution of the assets of the insolvent corporation, and this section alone, or a part of it, may be declared repugnant to the Constitution of the United States without affecting other section, or parts of the same section, of such statute, if it shall be the opinion of this court that the other sections, or parts of the same section, are valid. (Presser *v.* Illinois, 116 U. S., 252.) This section was followed by the court below in its decree making a distribution of the assets of the Embreeville corporation. It reads as follows:

"SEC. 5. *Be it further enacted*, That the corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities and engagements of the said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements, and contracts. Nevertheless, creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any

other country or countries, and also over mortgage or judgment creditors, for all debts, engagements, and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation, but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufacturers in this State, or otherwise."

The provisions of the Constitution of the United States to which it is claimed the Tennessee statute is repugnant are printed here simply for convenience, and are as follows:

ARTICLE IV. *Section 2.* "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

ARTICLE XIV. *Section 1.* "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Supreme Court of Tennessee holds, by its affirmative opinion, that the other States of the Union occupy the position of "countries" to the State of Tennessee. It was necessary to construe the act of the General Assembly of Tennessee, here drawn in question, in this way, in order to make the decree of discrimination in favor of the creditors of its own State. As we do not represent any of the alien creditors, we shall not stop to discuss the question of comity between nations and "countries," for the reason that, in our opinion, the questions to be determined in this cause arise under the Constitution of the United States and relate to the rights, privileges, and immunities of citizens of respective States of the Union, and also to the rights, privileges, and immunities of citizens of the United States. It will be conceded, no doubt, that the British creditors of the Embreeville Company, an alien corporation in the first instance, have no such rights under the Constitution as the plaintiffs in error, who are citizens respectively of Ohio and Virginia, and of the United States. The rights of the alien creditors are not in issue here, inasmuch as they are not parties to this writ of error, and they are only referred to for the purpose of drawing attention to the distinction between the rights of our citizens under the Constitution of the United States and the rights of aliens, which are not in this case protected by the Constitution of the United States in the same manner that it protects citizens of the States and of the United States.

There are two propositions to be discussed in favor of the plaintiffs in error.

1. What are their rights as citizens of Ohio and Virginia in the State of Tennessee under clause 1 of section 2 of Article IV of the Constitution of the United States?

2. What are their rights as citizens of the United States in the State of Tennessee under section 1 of Article XIV (Fourteenth Amendment) of the Constitution of the United States?

First Proposition.

Under the first proposition "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." That means that the plaintiffs in error, who are citizens of the States of Ohio and Virginia, are entitled to *all* the privileges and immunities of a citizen *in* the State of Tennessee, who, in common with themselves, may have a claim against the insolvent Embreeville Company. The word "several," used in the above clause of the Constitution, means, according to Webster's International Dictionary, "separate, distinct, particular, single." So that the privileges and immunities to which the citizens of each State are entitled in their own respective States are the same privileges and immunities that they are entitled to receive in each of the other States of the Union, inasmuch as the word "several," used in the clause, is defined to mean each particular or single State of the Union. In other words, the plaintiffs in error are entitled to the

same privileges and immunities in the State of Tennessee, under the clause of the Constitution, which they are entitled to in the States of Ohio and Virginia, respectively.

In the case of Paul *v.* Virginia (8 Wall., 168–180), in which the statute of the State of Virginia was drawn in question as being in conflict with clause 1 of section 2 of Article IV of the Constitution, this court says:

"It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property, and in the pursuit of happiness, and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. (Lemon *v.* The People, 20 New York, 607.) Indeed, without some provision of the kind, removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

In Connor *v.* Elliott (18 Howard, 591), it is decided that the clause of the Constitution of the United States

which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States," applies only to such privileges and immunities as grow out of citizenship. And it has been repeatedly held by this court that the protection designed by this clause has no application to a citizen of that State whose laws are complained of.

Bradwell *v.* The State, 16 Wall., 130–138.

In Ward *v.* Maryland (12 Wall., 418–430), where the same clause was under consideration, this court says:

"Attempt will not be made to define the words "privileges and immunities," or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt, those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business, without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State."

In the Slaughter House Cases (16 Wall., 36), this court, among other things, defines the difference between the rights of citizens of the States under the clause of the Constitution now under consideration, and the rights of citizens of the United States under the Fourteenth Amendment. In the opinion in that case privileges and immunities are said to embrace those privileges and immunities which are fundamental;

which belong by right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose the Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, the court says it would be more tedious than difficult to enumerate. The court then adopts, in the main, the definition of privileges and immunities announced in the case of Ward *v.* Maryland (12 Wall., 430), and states that such privileges and immunities embrace nearly every civil right for the establishment and protection of which organized government is instituted, and they are spoken of as rights belonging to the individual as a citizen of a State, and they have always been held to be the class of rights which the State governments were created to establish and secure. And the court quotes, with approval, from Paul *v.* Virginia (8 Wall., 180), the following language:

"The privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their Constitution and laws, by virtue of their being citizens." (Pp. 76, 77.)

The court then makes the following concise declaration in reference to the constitutional provision now under consideration. It is so concise that we have placed it in italics. It is as follows:

"*Its sole purpose was to declare to the several States that whatever those rights, as you grant or establish them to your*

own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction." (P. 77.)

This court has always refrained from announcing merely abstract definitions of the privileges and immunities to which the citizens of each State are entitled to in the several States under section 2 of Article IV of the Constitution, and has confined its decisions to what it terms the salutary rule of looking only to the particular right which is asserted and presented for consideration and decision in the cause submitted. For this reason the Federal question here presented has never been passed upon by the Supreme Court.

In McCready *v.* Virginia (94 U. S., 391–395) this court says:

"By Article IV, section 2, of the Constitution, the citizens of each State are 'entitled to all privileges and immunities of citizens in the several States.' Mr. Justice Washington, in Corfield *v.* Coryell (4 Wash. C. C., 380), thought that this provision extended only to such privileges and immunities as are 'in their nature fundamental; which belong of right to the citizens of all free governments.' And Mr. Justice Curtis, in Scott *v.* Sandford (19 How., 580), described them as such 'as belonged to general citizenship.' But usually, when this provision of the Constitution has been under consideration, the courts have manifested the disposition, which this court did in Conner *v.* Elliott (18 How., 593), not to attempt to define the words, but 'rather to leave their meaning to be determined in each case upon a view of the particular rights asserted or denied therein.' This clearly is the

safer course to pursue, when, to use the language of Mr. Justice Curtis, in Conner *v.* Elliott, 'We are dealing with so broad a provision, involving matters not only of great delicacy and importance, but which are of such a character that any merely abstract definition could scarcely be correct, and a failure to make it so would certainly produce mischief.'" (P. 395.)

In Cole *v.* Cunningham (133 U. S., 107, 113, 114), this court says:

"The intention of section 2 of Article IV was to confer on the citizens of the several States a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions." (Pp. 113, 114.)

In the criminal case of McKane *v.* Dunston (153 U. S., 684–687), this court says:

"Whatever may be the scope of section 2 of Article IV—and we need not, in this case, enter upon a consideration of the general question—the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another state under its Constitution and laws." (P. 687.)

This court has said that the object of clause 1 of section 2 of Article IV is to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship are concerned; * * * to inhibit discriminating legislation against them by other States; * * * to insure to

them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property; * * * to secure to them in other States the equal protection of their laws; * * * to remove from the citizens of each State the disabilities of alienage in other States, and give them equality of privileges with citizens of those States; * * * to maintain actions in the courts of any such State; * * * also that such privileges and immunities embrace nearly every civil right for the establishment and protection of which organized government is instituted, and are rights belonging to the individual as a citizen of a State, and which the State governments were created to establish and secure; * * * that they are the same privileges and immunities of the citizen of a State which are common to the citizens of other States, under their Constitution and laws, by virtue of being citizens; * * * that whatever rights are granted or established by a State for its own citizens, the same, neither more nor less, shall be the measure of the rights of citizens of other States within the jurisdiction of the State granting or establishing such rights; * * * that such privileges and immunities are rights of general citizenship, and include the right to institute actions.

The statute of Tennessee, the validity of which is now in question, is in conflict, either specially or generally, with all of the rights of the plaintiffs in error above enumerated. Of what benefit, for instance, is the right of the plaintiffs in error to bring or maintain suits in the courts of Tennessee, if the General Assembly of that State can, by the discriminating enactment now under

consideration, deprive them of the legitimate fruits of such suits? It seems to us that the act of the legislature of Tennessee embodies the worst species of class or discriminating legislation, and should not be allowed, therefore, to stand as valid.

Second Proposition.

The second proposition presents for discussion the rights of the plaintiffs in error under section 1 of the Fourteenth Amendment, which consists of two sentences, the first defining citizenship of the States and of the United States, and the second relating to privileges and immunities of citizens of the United States, to due process of law, and to the equal protection of the law. The part of the section to which special reference is made herein, reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

This section was fully considered in the Slaughter House Cases (16 Wall., 36), but the court then suggested the difficulty and danger of attempting an authoritative definition of what it is for a State to deprive a person of life, liberty, or property without due process of law, within the meaning of the Fourteenth Amendment, and held that the annunciation of the principles which gov-

ern each case as it arises is the better mode of arriving at a sound definition. No doubt the same mode of practice applies equally to the other parts of the clause which relate to the laws of a State which shall abridge the privileges and immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws. The court, in passing upon the question of due process of law, uses the following language, to wit:

"It seems to us that a statute which declares in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A, shall be, and is hereby, vested in B, would, if effectual, deprive A of his property without due process of law, within the meaning of the constitutional provision."

And the court significantly asks the question: Can a State make anything due process of law which by its own legislation it chooses to declare such?" And it answers the question by saying that to affirm the proposition "is to hold that the prohibition to the States is of no avail, or has no application where the invasion of private rights is affected under the forms of State legislation."

Davidson *v.* New Orleans, 96 U. S., 97, 100, 102.

The ruling of the court, as above stated, is in accordance with our contention here, which is, that the Legislature of Tennessee has enacted a law which, in effect, strictly speaking, interferes with due process of law in its own courts; it affords to the plaintiffs in error such due process up to the time of the entry of a decree in

the cause, but then, by its statute, abridges their privileges and immunities as citizens of the United States, and, subsequent to the entry of the decree, denies them due process of law in the collection of their claims, and also denies them the equal protection of the law in the State of Tennessee.

In Chicago, Burlington, etc., R. R. *v.* Chicago (166 U. S., 226, 234, 235), this court has reviewed the question of due process of law as applied to the taking of private property for public use; and it is there said:

"A State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms for procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form."

The court then repeats the language in Davidson *v.* New Orleans (*supra*), which is quoted above, and states that the statute of a State legislature which takes the property from one person and gives it to another would be treated, not as an exertion of legislative power, but as a sentence—an act of spoliation.

Is not what is condemned by the Supreme Court in its language above precisely what has been done by the act of the General Assembly of Tennessee? The plaintiffs in error have claims, the right and justice of which have not been questioned, but, on the contrary, decrees have been entered in their favor for the sums due them,

respectively. But when the point is reached in the proceedings of the State court for the distribution of the assets of the insolvent corporation, the court, by its decree, formulated in accordance with the said statute of Tennessee, deprives them of all their rights to the property of such corporation, notwithstanding the adjudications in their favor, and turns it over to other litigants upon no other ground of right than that they are citizens of the State of Tennessee. Is not this an abridgment of the privileges and immunities of the plaintiffs in error who are citizens of the United States residing in the States of Ohio and Virginia? And is it not also a denial to them of due process of law and of the equal protection of the law in the State of Tennessee? The procedure of the State court, in effect, under the statute of Tennessee, and by judicial action, amounted to the taking of the property of the plaintiffs in error simply because they were citizens of States other than the State of Tennessee, and giving it to certain creditors of the insolvent corporation, simply because they were citizens of Tennessee, and for no other reason.

It is true, as a general proposition, that it is not within the scope of the Fourteenth Amendment to withhold from States the power of classification, and that if the laws enacted by State legislatures deal alike with all of a certain class they are not obnoxious to the charge of denial of equal protection, yet it is equally true that such classification can not be made arbitrarily. This applies to the present cause, for the reason that all debtors must be treated alike and given equal protection, which has not been done, but, on the contrary, the

plaintiffs in error have been arbitrarily discriminated against, both by the statute and the decree of the State court. They do not stand equal before the law, nor do they receive equal protection. The classification against the plaintiffs in error contained in the legislation of the General Assembly of Tennessee has no reasonable basis upon which to stand.

Gulf, Colorado, etc., R'y *v.* Ellis, 165 U. S., 150, 153, 155.

Due process of law, the equal protection of the laws and privileges and immunities are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.

Duncan *v.* Missouri, 152 U. S., 377–382.

There may be no purpose upon the part of a legislature to violate the provisions of the Constitution of the United States, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution, in which case the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void.

Brimmer *v.* Rebman, 138 U. S., 78, 81;
Minnesota *v.* Barber, 136 U. S., 313–319.

In Hayes *v.* Missouri (120 U. S., 68–71) it is said that the Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed or by

the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. * * * Class legislation, discriminating against some and favoring others, is prohibited.

Hayes *v.* Missouri, 120 U. S., 68, 71, 72;
Barber *v.* Connolly, 113 U. S., 27–32.

We presume there is no impropriety in our reference to the fact that we are informed that the act of the Tennessee legislature, above set out, was passed at the instance, and for the benefit of Sir Thomas Hughes, the author of Tom Brown at Rugby, who had created under the English corporation act a corporation entitled "The English Board of Aid to American Land Ownership," having the purpose to establish a colony in Tennessee where the younger sons of the English nobility and gentility could come and acquire homes and live at less expense in a rural district than to be maintained by their families in an English colony or in the Kingdom of Great Britain and Ireland. So that, when this act was drawn the draftsman had in mind the fact that he was legislating touching alien corporations, and in the use of the term foreign country or countries, sister States could not have been in his mind in the slightest degree.

Respectfully submitted.

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